

UNITED STATES
PATENT AND TRADEMARK OFFICE



Patent Public Advisory Committee Quarterly Meeting

Patent Trial and Appeal Board Update

Nathan K. Kelley

Acting Chief Administrative Patent Judge, PTAB

Scott R. Boalick

Acting Deputy Chief Administrative Patent Judge, PTAB

February 4, 2016

Please submit questions to ppac@uspto.gov

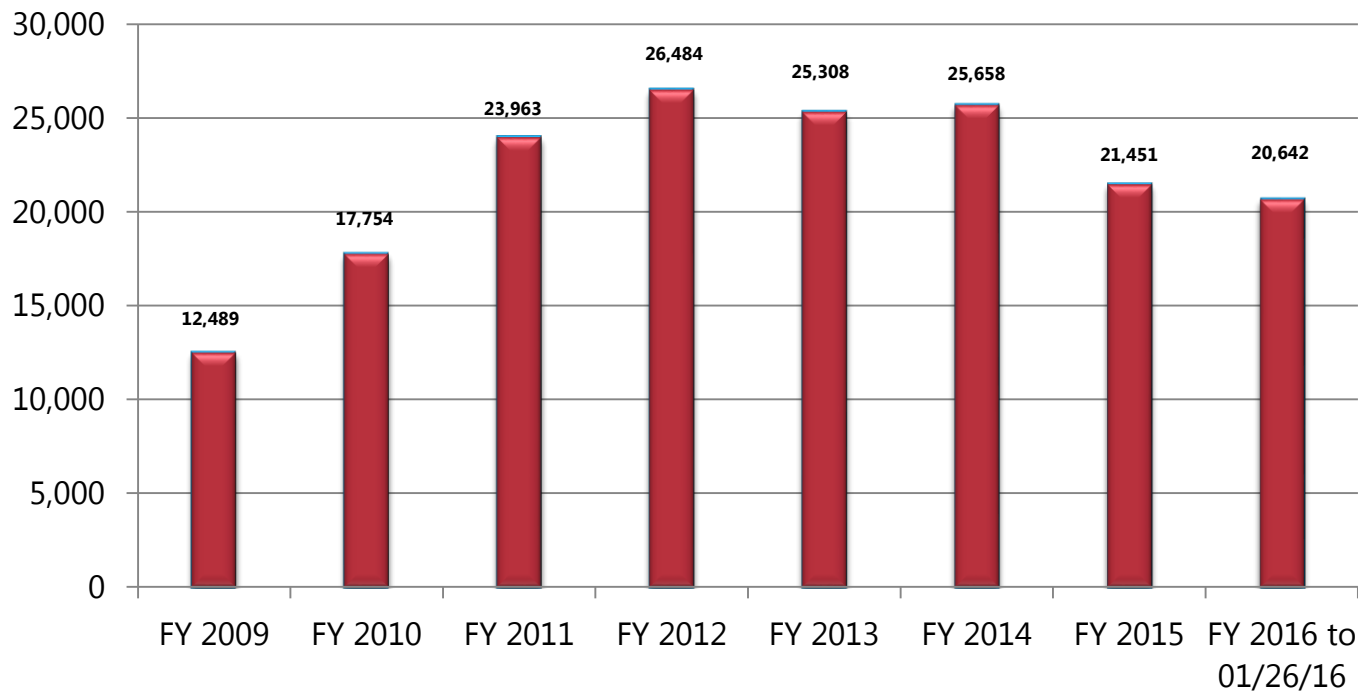
UNITED STATES
PATENT AND TRADEMARK OFFICE



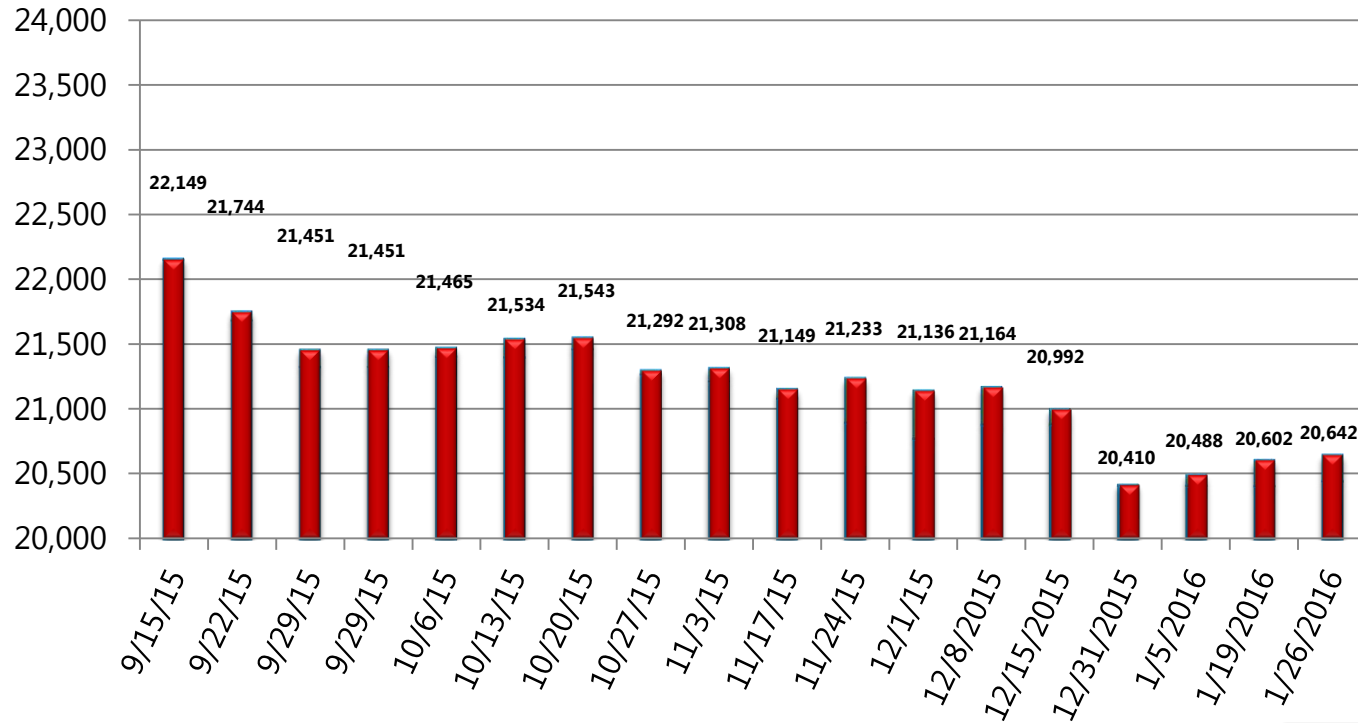
Appeals Statistics

PTAB Inventory – Pending Ex Parte Appeals

(excluding appeals from reexamination proceedings)



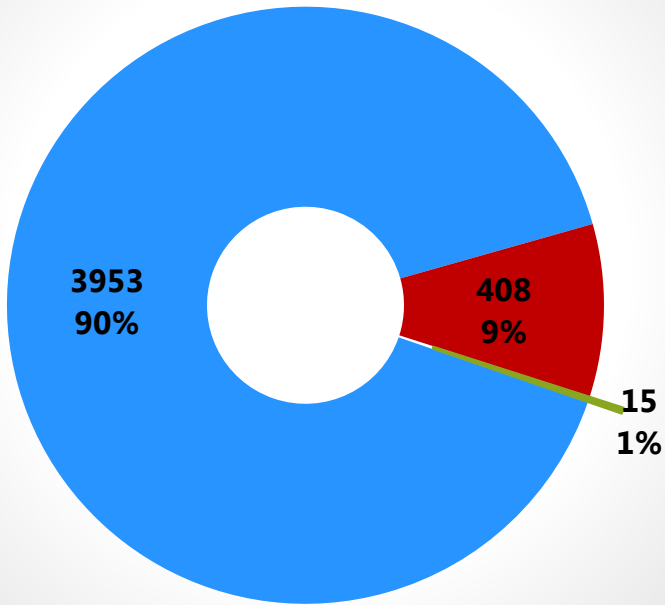
PTAB Inventory – Pending Ex Parte Appeals (excluding appeals from reexamination proceedings)



AIA Statistics

4376 Total AIA Petitions*

Cumulative from 09/16/2012



■ Total IPR Petitions ■ Total CBM Petitions ■ Total PGR Petitions

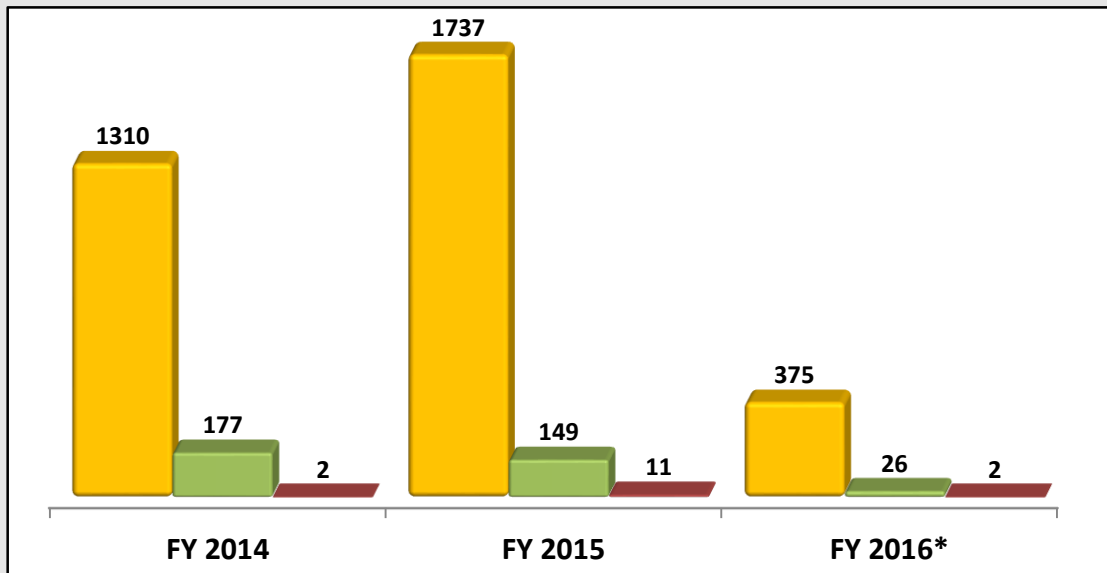
Narrative:

This pie chart shows the total number of cumulative AIA petitions filed to date broken out by trial type (i.e., IPR, CBM, and PGR).

***Data current as of: 12/31/2015**

Number of AIA Petitions Filed by Fiscal Year by Type

■ IPR ■ CBM ■ PGR

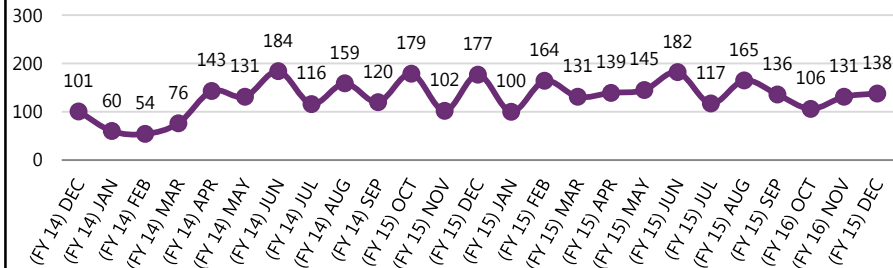


Narrative:

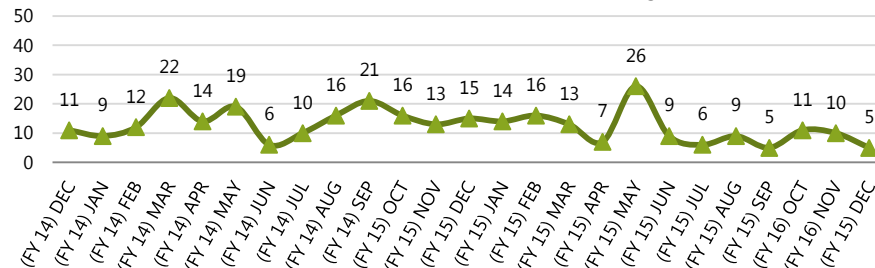
This bar graph depicts the number of AIA petitions filed each fiscal year, with each bar showing the filings for that fiscal year by trial type (i.e., IPR, CBM, and PGR).

***Data current as of: 12/31/2015**

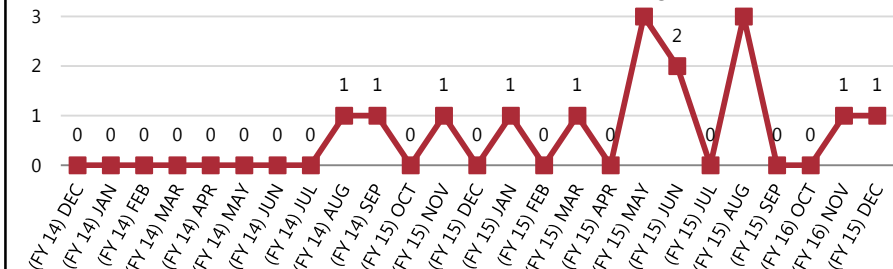
Number of IPR Petitions Filed by Month*



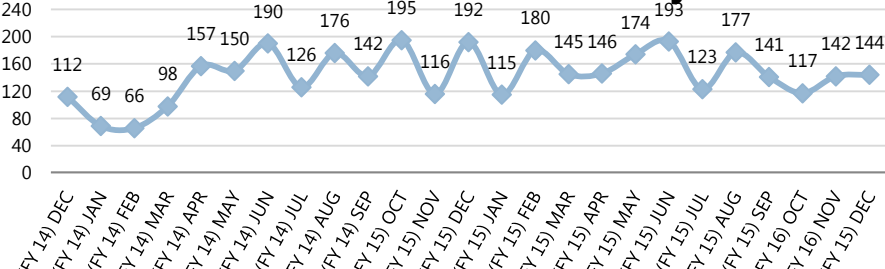
Number of CBM Petitions Filed by Month*



Number of PGR Petitions Filed by Month*



Number of TOTAL Petitions Filed by Month*



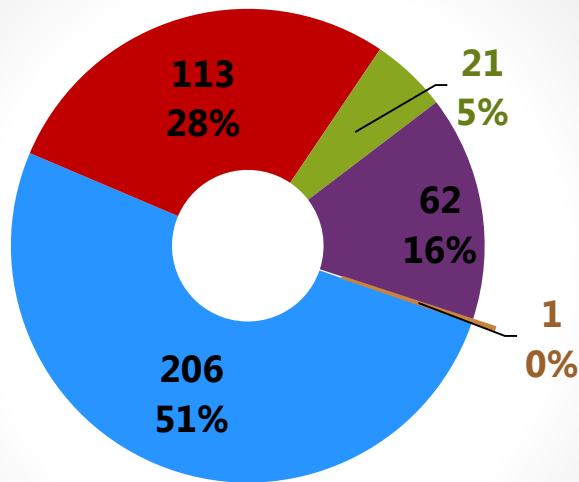
Narrative:

These line graphs display the number of IPR, CBM, and PGR petitions filed each month and the total number of all petitions filed each month from the effective date of the AIA trial provisions.

***Data current as of: 12/31/2015**

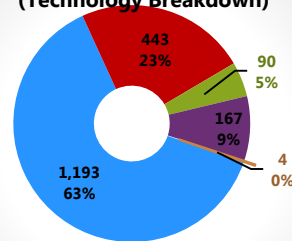


403 Total AIA Petitions in FY 16* (Technology Breakdown)

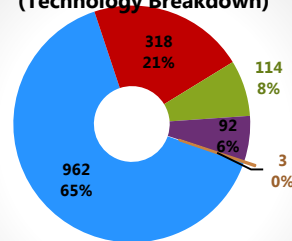


- Electrical/Computer - TCs 2100, 2400, 2600, 2800
- Mechanical/Business Method - TCs 3600, 3700
- Chemical - TC 1700
- Bio/Pharma - TC 1600

1897 Total AIA Petitions in FY 15* (Technology Breakdown)



1489 Total AIA Petitions in FY 14* (Technology Breakdown)

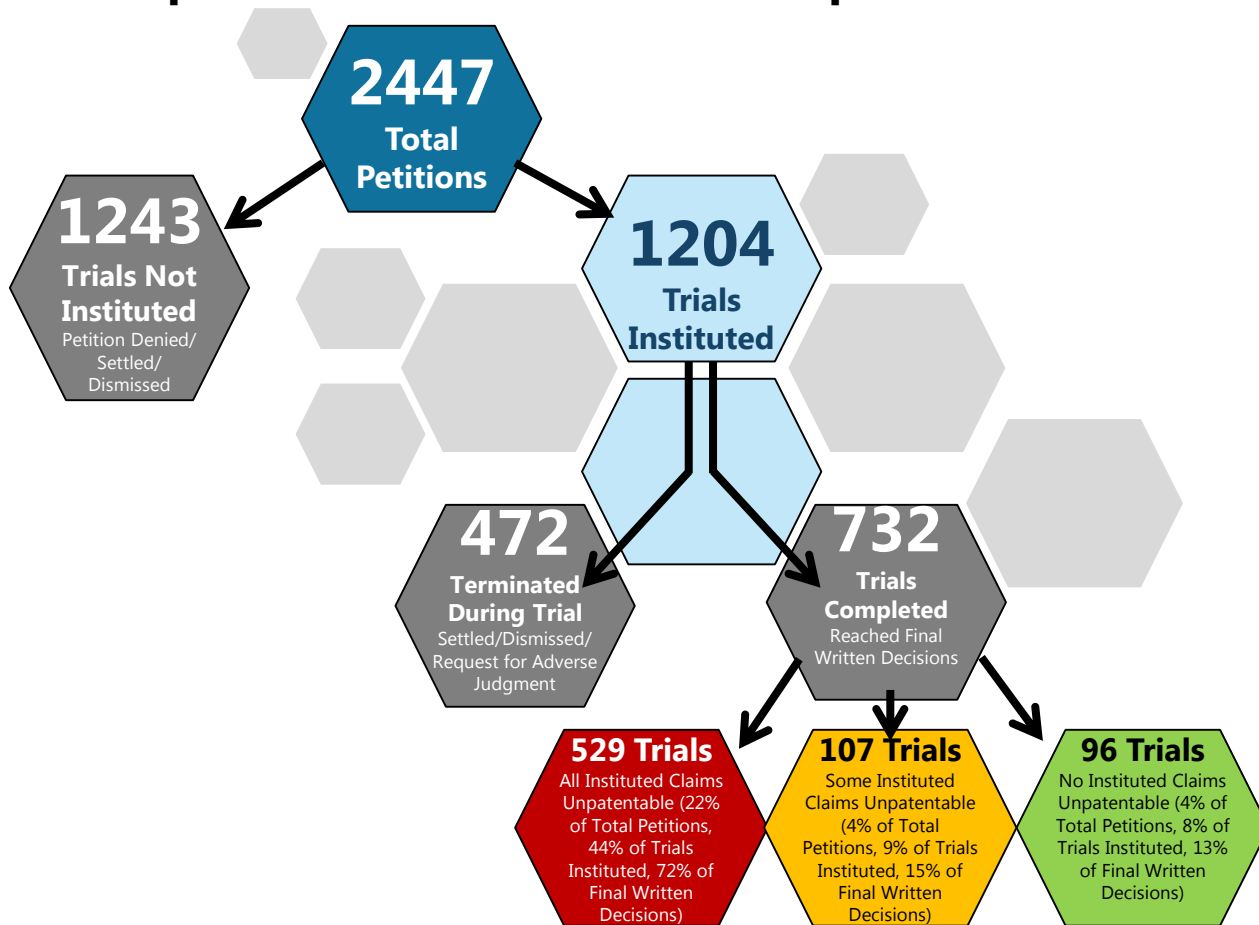


Narrative:

This pie chart shows the total number of AIA petitions filed in the current fiscal year to date as well as the number and percentage of these petitions broken down by technology.

*Data current as of: 12/31/2015

Disposition of IPR Petitions Completed to Date*

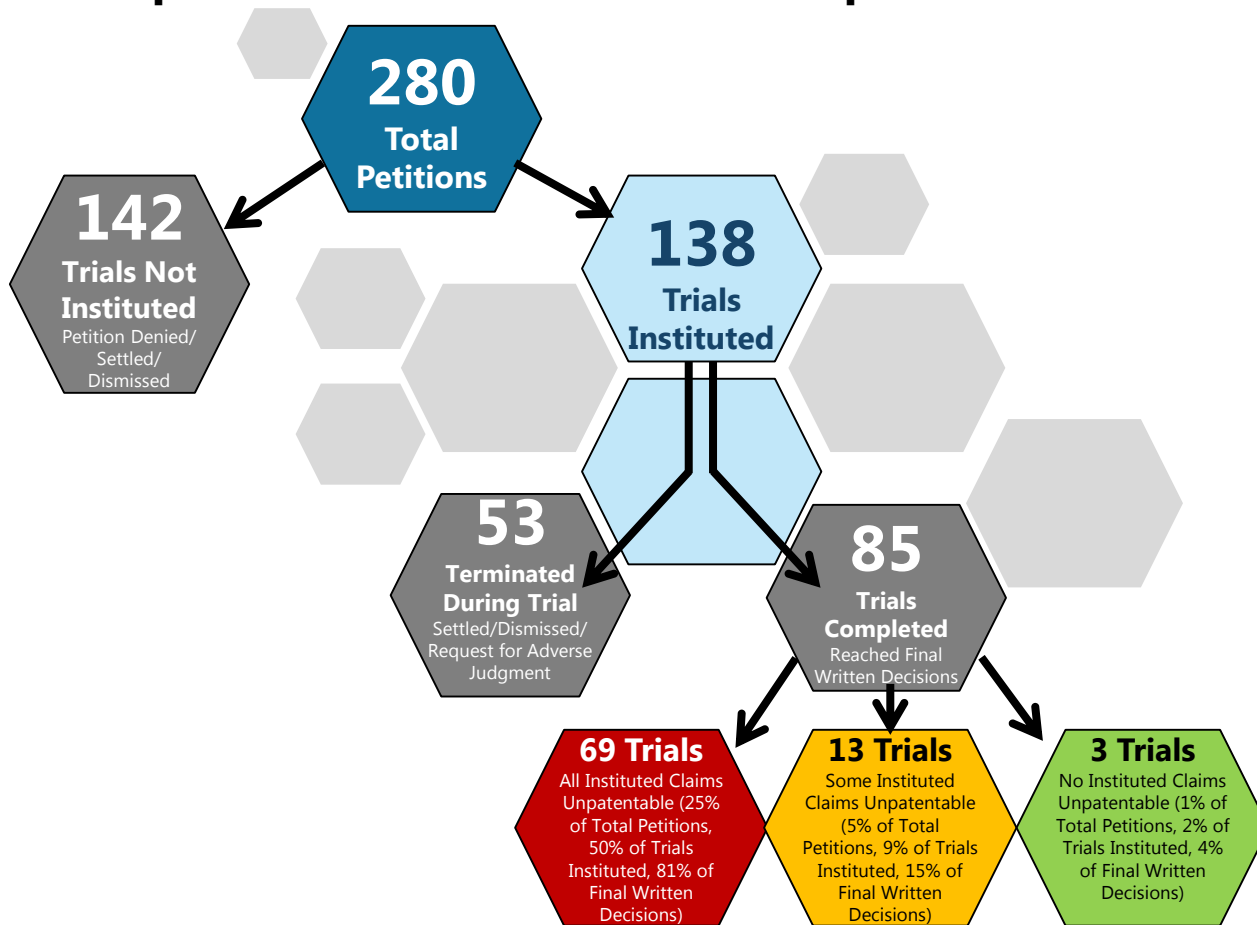


Narrative:

This graph shows a stepping stone visual depicting the outcomes for all IPR petitions filed to-date that have reached a final disposition.

*Data current as of: 12/31/2015

Disposition of CBM Petitions Completed to Date*



Narrative:

This graph shows a stepping stone visual depicting the outcomes for all CBM petitions filed to-date that have reached a final disposition.

*Data current as of: 12/31/2015

uspto

AIA Trial Rulemaking Update

AIA Rulemaking

- In response to stakeholder requests, the Office moved forward with two rule packages:
 1. A first final rule package that encompassed less difficult “quick-fixes” based upon both stakeholder comments and internal PTAB suggestions, including more pages for briefing for motions to amend and for petitioner’s reply brief; and
 2. A second proposed rule package published August 20, 2015.
- The second proposed rule package addresses the remaining issues raised in comments received from the public, as well as providing more guidance concerning our growing experience with AIA proceedings.
- The period for public comment closed on November 18, 2015. The Office will issue a final rule, responding to these comments, and also issue a revised Office Patent Trial Practice Guide reflecting guidance concerning our current practice in handling AIA proceedings.

Pilot Programs

Expedited Patent Appeal Pilot (EPAP)

- *Ex parte* appeal accorded special status when another is withdrawn
- Pilot effective June 19, 2015 for up to a year
- Timing Goal - 2 months to decide petition & 4 months from the date of petition grant to decide appeal
- Data through January 20, 2016: 23 petitions filed (20 granted and 3 denied); Average time to decide petition approximately 2 days

Small Entity Pilot Program

- Published 09/16/2015
- Provides opportunity for small entities to secure expedited review
- Small entities with a single pending appeal
- Agree to review based on one claim
- No rejections under §112
- Timing Goal - 2 months to decide petition & 4 months from the date of petition grant to decide appeal
- Data through January 20, 2016: 15 petitions filed (10 granted and 5 denied); Average time to decide petition approximately 12 days

PTAB Precedent and Recent Precedential Decisions

PTAB Designations for Decisions

PTAB Opinion Designation	Description of Designation
Precedential	A nominated decision may be considered for designation as precedential for any reason, but particular emphasis will be placed on opinions resolving conflicts or addressing novel questions. A precedential opinion is binding authority in subsequent matters involving similar facts or issues.
Informative	The Chief Judge may designate any nominated opinion as informative for any reason (unless it is designated as precedential). Opinions designated as informative provide the Board's general consensus on recurring issues and guidance to examiners, appellants, patent owners, or petitioners in areas where parties routinely misapply the law. An informative opinion is not binding authority .
Representative	The Chief Judge may designate any nominated opinion as representative (unless it is designated as precedential). Representative opinions typically provide a representative sample of outcomes on a matter and the designation is used to bring the opinions to the attention of the public. A representative opinion is not binding authority .
Routine	Every Board opinion is, by default, a routine opinion until it is designated as precedential or informative. A routine opinion is not binding authority .

PTAB Precedential Decisions Designation Process

- Board member or public may nominate any opinion for consideration.
- Chief Judge considers nominated opinions and may circulate opinion to full Board for vote.
- Director must concur with favorable vote.
- Opinion is designated as precedential and is binding on future panels.

PTAB Recent Precedential Decisions

- *LG Electronics, Inc. v. Mondis Technology Ltd.*, IPR2015-00937, Paper 8 (PTAB Sept. 17, 2015)
 - This decision pertains to interpretation of “served with a complaint” for purposes of triggering the one-year time bar set forth in 35 U.S.C. § 315(b).
- *Westlake Services, LLC v. Credit Acceptance Corp.*, CBM2014-00176, Paper 28 (PTAB May 14, 2015)
 - This order interprets the estoppel provision of 35 U.S.C. § 325(e)(1).
 - “[E]stoppel is applied on a claim-by-claim basis. By its terms, estoppel is invoked under Section 325(e)(1) as to ‘a claim in a patent’ that ‘results in a final written decision under’ 35 U.S.C. § 328(a).”

Questions and Comments

Nathan K. Kelley

Acting Chief Administrative Patent Judge, PTAB

Nathan.Kelley@USPTO.GOV

Scott R. Boalick

Acting Deputy Chief Administrative Patent Judge, PTAB

Scott.Boalick@USPTO.GOV

(571) 272-9797

